

**INTERGOVERNMENTAL AGREEMENT BETWEEN**  
**THE CITY OF ATLANTA**  
**AND**  
**THE GEORGIA DEPARTMENT OF TRANSPORTATION**

This Agreement, dated this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (“CITY”), and **THE GEORGIA DEPARTMENT OF TRANSPORTATION**, an Agency of the State of Georgia, organized under the laws of the State of Georgia (“GDOT”), for the development and management of those properties being more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof (hereinafter the “Property”).

**RECITALS**

WHEREAS, CITY and GDOT are empowered to enter into this agreement pursuant to the 1983 Georgia Constitution, Article IX, Section III, Paragraph I; and

WHEREAS, CITY and GDOT desire to see the Property developed for the purpose of a multi-modal transportation passenger terminal facility (the “MMPT”) as generally set forth in that certain Concept Design Report for the Multi-Modal Passenger Terminal prepared by Georgia Rail Consultants and dated February 2002 (further defined below and hereinafter “MMPT Concept Design Report”); and

WHEREAS, CITY has participated and been involved in the concept and design phases and has been provided with copies of the MMPT Concept Design Report; and

WHEREAS the parties hereto acknowledge and agree that the MMPT Concept Design Report describes the proposed initial phases and activities concerning the multi-modal passenger project which will be further developed in phases and stages; and

WHEREAS, the MMPT Concept Design Report recommends joint development above and around the multi-modal passenger project; and

WHEREAS, CITY and GDOT agree that the various phases of the multi-modal passenger project shall be designed, consistent with effective and efficient transportation practices, to accommodate, and in any event not preclude, such joint development; and

WHEREAS, GDOT requires full authority and control over the development of the Property for the funding and implementation of the Project (as hereinafter defined), the exercise of such authority GDOT will cooperatively coordinate with CITY; and

WHEREAS, CITY, to effectuate the terms of this Agreement, agrees to convey the Property to GDOT; and

WHEREAS, the Property and its use, including any joint development of the Property, is subject to all Applicable Law (as hereinafter defined); and

WHEREAS, any joint development of the Property or any Excess Property or City Excess Property (as hereinafter defined) shall be governed by Applicable Law; and

WHEREAS, CITY may develop or cause to be developed any Excess Property, provided CITY has obtained ownership or rights of use of portions of the Property from GDOT, received any necessary approval from FTA and complied with all Applicable Law and has cooperatively coordinated with GDOT, any proposed development and construction efforts by CITY regarding

the development of such Excess Property; and

WHEREAS, CITY and GDOT find that it is in the public interest, CITY's interest and GDOT's interest to enter into this intergovernmental agreement; and

WHEREAS, by Resolution adopted by the Atlanta City Council on or about \_\_\_\_\_, 2005, the Mayor is authorized to execute this Intergovernmental Agreement on behalf of the CITY;

NOW, THEREFORE, CITY and GDOT agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

1. "Abandon" means a decision made by GDOT in accordance with state and federal law to discontinue the planning, design or construction of the Project.
2. "Applicable Law" means all applicable federal, state, city and local laws, rules, policies, requirements and regulations, including, without limitation, the Federal Transit Administration ("FTA") laws, rules, policies and requirements as set forth under 49 USCS Section 5301 et. seq., including any and all subsequent policies rules and regulations related thereto; provided, however that federal and state sovereignty and supremacy of law shall not be abridged.
3. a. "Excess Property" means portions of the Property (i) not required for the effective and efficient operation of the multi-modal passenger project with its related transportation facilities; (ii) recommended for joint development by the MMPT Concept Design Report; and (iii) submitted and approved by FTA pursuant to Applicable Law. Excess Property specifically includes any and all air rights.

b. “City Excess Property” means Excess Property deeded to the City after FTA approval, specifically including any and all air rights.

4. “Joint Development Agreement” is defined as an agreement to be entered into between the CITY and GDOT which shall be solely for the purpose of more fully defining the future administration of the multi-modal passenger terminal and related transportation facilities which are to be constructed during the pendency of the Project and not for defining the allocation of any money to be paid to the CITY by entities that may be chosen to participate in the development of any part of the City Excess Property.

5. “Multi-Modal Passenger Terminal Concept Design Report” or “MMPT Concept Design Report” is defined as that certain report- titled *“Concept Design Report for the Multi-Modal Passenger Terminal”* —prepared by Georgia Rail Consultants and dated February 2002, sometimes called the “Concept 6” report, as it currently exists or as may be amended, revised or further developed.

6. “Project” —is defined as the development and construction of a multi-modal passenger terminal and related transportation facilities as preliminarily indicated in the MMPT Concept Design Report and as further developed and finalized through a schematic design and final design and including any and all construction drawings and plans for the implementation, construction and maintenance of said multi-modal passenger terminal and related transportation facilities over an area known as the “Gulch” and lying west of Forsyth Street, North of Alabama Street, West of Spring Street, North of Martin Luther King Jr. Drive, East of Centennial Olympic Park Drive and South of Wall Street, which includes the Property.

7. “Property” is defined as that part of the project area presently owned by the City of Atlanta, as more particularly described in Exhibit “A”.

8. “Transfer Documents” are defined as those documents considered necessary by the parties to effectuate the transfer of the Property from the City to GDOT.

## **ARTICLE II**

### **PROPERTY CONVEYANCE**

CITY shall convey the Property with an express grant of fee simple title without warranty to GDOT and quitclaim any interest in adjoining areas, including air rights and underground or subterranean rights in order to facilitate the development of the Project. Such transfer to GDOT may be effected by the execution of Transfer Documents separate from this Agreement but this Agreement shall not be effective unless and until such transfer has occurred. The terms of this Agreement shall survive the execution of the Transfer Documents. This Agreement shall survive any subsequent amendment to the Transfer Documents in the event that the Transfer Documents are amended and shall be presumed to incorporate any and all changes to the Transfer Documents however such amendments may arise. GDOT hereby agrees that in the event that GDOT abandons the Property-Project (The definition of “Abandon” on page 3 refers to the Project; the verbiage in this section seems inconsistent.) or any portion of the Property Project, subject to State and Federal statutes, rules and regulations, GDOT shall convey, via quitclaim deed, said abandoned Property including any and all air rights to CITY. GDOT agrees that if for any reason the Project is not built in the location specified in the “*Concept Design Report for the Multi-Modal Passenger Terminal*” (“Concept 6”) that it shall put the Property to no other use

and shall abandon all parts of the Property not specifically needed for any other multi-modal passenger terminal concept design that may hereinafter be created.

GDOT agrees that where any federal funding may be available for the Project or any related infrastructure improvement project subject to the provision of a local match to obtain such funding and where such requirement may be satisfied by an allocation of some or all of the appraised value of the Property, that GDOT shall apply the appraised value of the Property for such purposes. GDOT further agrees that the application of such appraised value of the Property as herein conveyed by the CITY relieves GDOT of the obligation to provide funds from the State of Georgia for the purpose of such local match and agrees to provide a local match portion to other funding for the Project at least equal to the appraised value of the CITY's conveyance before requesting ~~or requiring~~ (Are we comfortable with GDOT "requiring" additional contributions?) any additional contributions from the CITY for the Project.

### **ARTICLE III**

#### **DESIGN, CONSTRUCTION PLANS, AND**

#### **CHANGES TO FACILITATE CITY DEVELOPMENT**

GDOT and CITY acknowledge that the development of the areas around the terminal facility, including any air space above the facility, will support and enhance the value of the facility in general. Although no specific construction drawings have been prepared, GDOT is aware that CITY desires to develop, or cause to be developed, said surrounding areas. Parties acknowledge that any development by CITY can only occur with respect to City Excess Property provided CITY enters into a Joint Development Agreement with GDOT for the City Excess Property. The Parties acknowledge that any development of the Excess Property is subject to

approval by FTA and subject to Applicable Law. GDOT agrees that no portion of the Excess Property that is made available for development by FTA or made available for development under other Applicable Law shall be developed by GDOT without a Joint Development Agreement with the City and that no part of the Excess Property may be transferred by GDOT to any other party or entity, including without limitation governmental entities, of whatever type or description, without an amendment to this Agreement that has been approved by the CITY. GDOT agrees that all Excess Property shall become City Excess Property at a time to be specified in the Joint Development Agreement and that GDOT's purpose in entering into the Joint Development Agreement is solely for the purposes of orderly operation of the multi-modal passenger terminal facility and administration of the related transportation facilities and not for the purpose of recovering costs associated with the Project or allocating revenues received from the development of the Excess Property or the City Excess Property. GDOT agrees that CITY, prior to the creation of the Joint Development Agreement and without further approval of GDOT, shall be permitted to enter into one or more agreements with third parties which anticipate the transfer of the Excess Property to the City and the transfer of certain rights to develop the City Excess Property. For such City Excess Property, CITY shall have sole responsibility for obtaining any and all necessary approvals from the FTA, unless agreed otherwise in the Joint Development Agreement and complying with all Applicable Law.

CITY acknowledges and agrees that the design of the Project shall be developed by GDOT and cooperatively coordinated with CITY as to City Excess Property. Final construction drawings and plans shall be prepared in reasonable accordance with the MMPT Concept Design Report for the construction of the Project in various stages and phases and in a manner to accommodate joint development. The CITY may request that GDOT include certain structures or

improvements within the Project that may be used to support platforms or other structures allowing for future upper floor improvements above the Project. GDOT shall not be required to include such plans and specifications in the construction drawings and plans but shall cooperatively review such requested additions and consider their inclusion. Prior to finalizing the construction drawings and plans concerning the Property, GDOT shall provide CITY with a copy of said construction plans. CITY shall have 60 days from receipt of said construction plans to notify GDOT of any requested changes to said construction plans. GDOT and CITY shall cooperatively review any such requested changes and GDOT shall in its sole discretion determine whether said changes can be made prior to commencement of construction. CITY and GDOT agree to work together in an expeditious manner to discuss possible changes and try to incorporate changes. Any and all requests must not adversely affect construction and stability of the Project, must not unreasonably increase the cost of construction or create additional time delays and must meet with GDOT standards and requirements. Further any and all changes shall comply with all Applicable Law. Where such requests comply with Applicable Law and with GDOT standards and requirements and the CITY agrees to pay for the inclusion of such changes and GDOT has agreed to the inclusion of such changes in the final plans, GDOT agrees to enter into one or more conditional easement agreements with the CITY regarding the future construction of such structures or improvements. Any additional costs, expenses or penalties resulting from modification of plans requested by CITY shall be paid by CITY prior to commencement of construction. GDOT agrees that the CITY may enter into one or more agreements with third parties whereby such costs expenses or penalties may be borne by the third parties.



GDOT hereby agrees to cooperate with construction efforts by CITY regarding the development of City Excess Property, provided that GDOT shall not incur any additional costs, expenses or penalties as a result of such development and any such cooperation shall not result in any penalties or delays to GDOT and the construction schedule for the Project. GDOT shall notify CITY of any additional costs and expenses and CITY shall remit payment to GDOT within 30 days of receipt of said notice.

In the event construction has commenced and CITY desires to make changes to GDOT plans to further develop surrounding area, CITY shall notify GDOT in writing of its desire to change construction plans. GDOT hereby agrees to work with CITY so long as changes do not adversely affect timing and cost of Project and further provided said changes comply with all FTA statutes, rules and regulations, and state and local statutes, rules, and regulations. GDOT shall not incur any additional costs or penalties as a result of any changes and said changes shall not result in delays to GDOT and the construction schedule for the Project. Any additional costs, expenses or penalties shall be paid by CITY prior to plan change implementations, if practicable, but in any event within 60 days of notice of such additional costs to CITY.

#### **ARTICLE IV**

##### **TERMS AND CONDITIONS**

##### **1. Effective Date of Agreement and Property Transfer.**

This Agreement shall become effective upon the date of signature of the last party to sign.

**2. Good Faith.**

The Parties agree to work together in good faith for the timely implementation of the MMPT Design and the execution of appropriate deeds and other documentation as required.

**3. Dispute Resolution.**

Prior to the filing of any lawsuit arising from the terms of this agreement, the parties shall participate, through the use of a neutral or mediator, in non-binding alternative dispute resolution in order to attempt to resolve the disagreement. Only upon failure of alternative dispute resolution to provide a remedy, may a suit be filed in the Superior Court of Fulton County, as provided in O.C.G.A. §50-21-1.

**4. Miscellaneous.**

A. Notices. Except as otherwise provided, all notices that either Party may give to the other pursuant to this Agreement shall be in writing and sent by statutory mail pursuant to O.C.G.A. §9-2-12 to the Parties at the addresses provided for notification. These names and addresses may be changed by giving written notice as specified below to the other Party. Any notice which may be permitted or required under this Agreement shall be in writing and shall be deemed to have been duly given as of the date and the time the same are deposited in the mail, with postage prepaid, to be mailed by registered or certified United States mail, return receipt requested, and addressed to CITY as follows:

**JAMES SHELBY, ACTING COMMISSIONER  
DEPARTMENT OF PLANNING AND NEIGHBORHOOD DEVELOPMENT  
ATLANTA CITY HALL  
55 TRINITY AVENUE, S.W, SUITE 1450,  
ATLANTA, GA, 30303**

and to GDOT as follows:

**GEORGIA DEPARTMENT OF TRANSPORTATION  
OFFICE OF INTERMODAL PROGRAMS  
ATTN: HAL WILSON  
276 MEMORIAL DRIVE, SW  
ATLANTA, GA 30303**

- B. Headings. Headings are for reference only and should not and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.
- C. Survival. If any provision of this Agreement shall be declared unlawful or unenforceable as a matter of law, then that provision shall be deemed void and of no effect and the remainder of the Agreement shall survive such event.
- D. Time of the Essence. Time is of the essence with regard to each provision of this Agreement.
- E. Interpretation and Governing Law. This Agreement shall be construed and performed according to the laws of the State of Georgia.
- F. Force Majeure Delays. Neither GDOT nor CITY shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, or sabotage.
- G. Non-Invalidation and Discrepancy. If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.
- H. Modifications and Amendments. Except as otherwise stated herein, the conditions, terms and agreements contained in this Agreement may only be altered, amended, modified,

cancelled, or otherwise dealt with by means of an instrument or instruments executed by the parties hereto or their respective successors in interest or assigns.

IN WITNESS WHEREOF, the Mayor of the CITY OF ATLANTA and the Commissioner of the GEORGIA DEPARTMENT OF TRANSPORTATION have set their hands

and seals, and have caused this Agreement to be executed by the duly authorized officials, identified below as of the day and year first above written.

**CITY OF ATLANTA**

(Seal)

\_\_\_\_\_  
Municipal Clerk (Seal)

\_\_\_\_\_  
Mayor

RECOMMENDED:

APPROVED

\_\_\_\_\_  
Commissioner of Public Works

\_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO FORM

\_\_\_\_\_  
Commissioner of Planning

\_\_\_\_\_  
City Attorney

**GEORGIA DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Notary Public (Seal)

\_\_\_\_\_  
Commissioner